

Public Policies

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Governor's commission calls for new standards, private center to reduce medical errors in Missouri

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Public Policies

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Public Policies serves as a key communications link between MDI and Missouri's legislators, weekly and broadcast media, industry observers and trade associations.

**Comments or questions,
call 573-526-2946.**

A governor's commission has urged the state's healthcare community to adopt new standards to protect and manage patient safety, including notification of errors and counseling for all patients who are harmed.

The Missouri Commission on Patient Safety also proposed establishment of a private center that would bring together healthcare facilities, professionals, consumers, employers, state agencies and others on healthcare safety and quality projects in Missouri. The center would work to reduce mistakes in all settings, including 900 to 2,000 estimated deaths from preventable medical errors in Missouri hospitals alone each year.

"Healthcare long has had an error rate that other industries consider unacceptable," said Dr. Gregg Laiben, the commission chairman from Kansas City. "This report can help inaugurate a new era for healthcare in Missouri - and the public should demand these changes."

(See commission, p. 2)

State insurance plan begins taking medical malpractice applications

The new state-sponsored medical malpractice insurance program has begun accepting applications for coverage.

Physicians and other eligible health-care providers can go to the Web site of the Missouri Medical Malpractice Joint Underwriting Association (JUA) - www.personal-plans.com/mmmjua - to download an application and directly apply, or they can go through their normal agents and brokers.

At Gov. Bob Holden's request, Missouri Insurance Director Scott Lakin set the state plan in motion last year by holding a public hearing and ruling that medical malpractice coverage is not "reasonably available" for all medical providers, especially some physician specialties.

"We are pleased with the JUA's approach to this problem, which results from not enough market capacity to meet demand in an affordable way," Lakin said. "Despite the restrictions imposed by Missouri law, the board of directors has worked to make the JUA available to help physicians and other providers without posing any unnecessary obstacles."

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commission

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Gov. Bob Holden appointed the 16-member Missouri Commission on Patient Safety in September 2003 to identify how to reduce medical errors and other incidents that lead to malpractice litigation. The report also is Missouri's response to a landmark federal Institute of Medicine study that estimated 44,000 to 98,000 Americans die needlessly each year from preventable errors in hospitals, not counting outpatient settings.

A Harvard School of Public Health-Kaiser Family Foundation study in 2002 found that 42 percent of Americans or their family members have been the victims of medical errors, with 10 percent involved with deaths.

Gov. Holden said he looks forward to forging the public-private partnership outlined in the report. He said he will appoint a team of officials to identify areas in which state government can aid the new center and implement the recommendations.

These proposals rely mainly on the private sector to step forward and reduce error rates," Holden said. "But as governor, I have a vested interest in making sure these efforts better protect all our citizens. In fact, state government — with its services for children, the low-income, the elderly and public employees — is the largest buyer of healthcare services in Missouri."

Laiben said the recommendations focus on creating a "culture of safety" in Missouri that encourages healthcare staff to report and investigate errors and then take steps to ensure they don't occur again.

"American medicine historically has been caught up in a 'culture of blame,' assuming that malpractice litigation and disciplining individuals will solve our prob-

lems. They haven't. We still have up to 98,000 people — or more in some studies — dying needlessly each year in hospitals," Laiben said.

"Healthcare depends on humans, who all are fallible. We need to fix healthcare systems that today don't *prevent* people from making mistakes that harm patients.

Aviation and other industries have shown that we can develop fail-safe systems and cut the risk of death and injury substantially. We will protect more people and save more lives by focusing on a bigger picture."

Minimum standards for patient safety

The commission recommended that to prevent and manage medical errors, all Missouri healthcare organizations and professionals should:

- Disclose errors to patients. Contrary to conventional wisdom, disclosure tends to reduce malpractice litigation and costs.
- Identify patient advocates upon admission and provide counseling for those affected by adverse events or outcomes.
- Establish internal reporting and analysis of errors and "near misses" that allow healthcare systems to avoid future mistakes.
- Adopt "best practices" and technological advances that reduce errors.
- Protect any healthcare professional or employee from reprisal who in good faith reports conditions or events that jeopardize patient safety.

Laiben said that while the commission did not recommend laws to require most of these steps, he expects the new center and the public to press hospitals and other facilities to implement such standards.

"If healthcare organizations regularly field questions from the media and patients about whether they follow these steps, we will see more facilities adopting the standards and, in fact, publicizing what they do to protect patients," Laiben said. "Existing state licensing and private accreditation do not guarantee the kind of improvements the public needs."

Missouri Center for Patient Safety

The new center — designed as a private, nonprofit corporation — would fill the leadership void on patient safety in Missouri and oversee:

- **A voluntary statewide reporting program** that would allow the center to analyze errors and "near misses," identify how institutions succeed in eliminating common problems and promote "best practices" among all Missouri healthcare organizations and professionals.
- **A consumer coalition** that would work to improve education materials and issue alerts on unsafe conditions. Reliable information is not readily available for patients to actively participate in their own treatment, help avoid errors and improve their outcomes, the commission concluded.
- **An education coalition** that would help the state's six medical schools, 92 nursing schools and dozens of other health education programs develop modern patient safety curricula. Missouri does not include such training in required continuing education for physicians, nurses and other professionals. The commission's report in particular stresses the need to upgrade

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commission

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the communications skills of professionals to avoid poor outcomes, errors and litigation not prompted by actual malpractice.

The center also could act as Missouri's "patient safety organization" to operate a voluntary error reporting system under pending federal legislation.

Laiben said he and other commissioners – who served without compensation — have decided to continue working independently to form the center and secure funding. "By endorsing a private center, the commission chose the toughest path to follow, particularly in financing the organization. But we believe that a private center has the best chance to quickly mobilize Missouri's healthcare community to, in essence, re-tool the way it approaches safety in medicine," Laiben said. "We are looking to foundations and healthcare associations to help make this vision a reality for Missourians."

Steps the state can take to improve patient safety

Although the report focused on private action to reduce errors, it identifies steps for state government, including:

- Passing laws that will protect healthcare organizations and professionals from legal liability when they are reporting, analyzing and devising ways to prevent medical errors. Missouri law now provides protection when internal "peer review committees" consider discipline of physicians and many other professionals, but does not clearly do so when staff are considering unsafe facility conditions and systems.

Providers consequently are discouraged from adopting the voluntary reporting and analysis endorsed by the report. "To be frank, many of our critical recommendations are dead in the water without better protections, particularly in the current legal environment," Laiben said.

- Providing incentives in the Medicaid and state employee healthcare systems to reward healthcare organizations and professionals that adopt patient safety practices. As the largest purchaser of healthcare services in Missouri, state government can lead the way for other employers and healthcare buying groups to use similar incentives. While healthcare facilities will incur substantial upfront costs for some patient safety improvements, patients and other groups will reap many of the financial benefits, and medical providers could even face reduced revenues by eliminating some errors.
- Encouraging medical malpractice insurers to provide discounts for healthcare providers that adopt patient safety practices.
- Beginning a state licensing program for outpatient facilities – such as diagnostic imaging, cardiac, gastrointestinal, endoscopy and dialysis centers – that perform sophisticated procedures once reserved for licensed hospitals.
- Improving oversight of professionals through legislative consideration of a lengthy list of deficiencies cited by state licensing boards.



The 16-member commission was drawn primarily from the healthcare community: seven physicians, including a health maintenance organization's medical director; a hospital administrator; two hospital patient safety specialists; a nurse; two malpractice attorneys; a consumer; and officials from the state insurance and health/senior services departments. Executive directors of state licensing boards for physicians, nurses and pharmacists served as ex officio members, and the insurance and health/senior services departments provided staff support.

Laiben serves as medical director of MissouriPRO, the state's quality improvement organization for Medicare and its senior beneficiaries. Kathryn Nelson of Columbia — patient safety director for the University of Missouri-Columbia Health Care, its two hospitals and 59 clinics — was vice chairman.

The full commission report is available at the Missouri Department of Insurance Web site -- www.insurance.mo.gov — along with the minutes of its meetings from October until June, presentations and testimony from state and national experts on patient safety and Internet resources.



JUA

(continued from p. 1)

The JUA's board, composed of eight insurance executives, recently approved rates that are considered comparable to current private market pricing.

For example, obstetricians outside metro St. Louis and Kansas City with 10 years of practice and no claims would pay base rates of \$75,175 for coverage while such doctors in those urban areas pay \$83,453. For family practice physicians with 10 years of experience and no claims, base rates are \$15,570 in outstate Missouri and \$17,226 in greater St. Louis and Kansas City.

Among major points in the JUA's initial operations:

- Sales are open to most licensed Missouri medical providers, including physicians, dentists, chiropractors, hospitals, nursing homes and group practices.
- The JUA will only cover the "Missouri" portion of the health care provider's practice.
- The policies will provide coverage on an "occurrence" basis. These policies insure any incident that occurs during the policy period, no matter when it is filed. Historically the dominant form of coverage, occurrence policies in the past decade have given way to less-expensive "claims-made" contracts, which only provide coverage if both the medical event and the claims occur during the policy period; claims-made policies, however, eventually require the provider to buy costly multiple policies or riders for full protection.
- The contracts will provide coverage up to \$1 million per incident and \$3 million per policy year, or the normal requirements for physicians and other providers in managed care networks.
- The JUA also will sell "prior acts" and general liability coverage with the same limits. The "prior acts" policies will resolve problems faced by providers who had claims-made policies before; general liability provides broader coverage for corporations.
- The board approved an alternative that will ease the potential burdens of a legal provision requiring JUA policyholders to pay the equivalent of a double premium their first year. Policyholders can meet that requirement by paying cash or signing a promissory note, which is subject to call at a later date.
- The JUA will offer a payment plan that calls for 40 percent of the costs up front, 30 percent within 60 days and the remainder at 120 days.
- Agents will earn 5 percent commissions. Policy prices will not vary based on whether an agent is involved, so providers can continue to use their former brokers and agents without penalty.

Missouri's current malpractice difficulties resulted after a series of national insolvencies and market withdrawals reduced the state's former market for new business by 70 percent. At least eight companies either failed or decided to no longer sell malpractice coverage nationally; another large writer declared a moratorium on writing new physician policies after a period of rapid growth.

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MDI to provide extra warning before revocation of licensees with tax liabilities

Department of Revenue has identified 16,000 with unpaid, unfiled taxes

The Missouri Department of Insurance (MDI) will provide an extra warning before it revokes licenses when agents have apparent unpaid tax liabilities to the state.

Legislation passed in 2003 requires MDI to revoke the licenses of agents and brokers – now known legally as insurance "producers" – if they owe Missouri taxes or failed to file returns.

The Department of Revenue supplied MDI with 1,900 names of producers for revocation July 1 and added another 3,000 July 7. DOR originally notified 16,000 of Missouri's 100,000 licensed producers about tax liabilities.

"We are extremely concerned about continuity of service to insurance policyholders and other consumers," Lakin said. "Once revocation occurs, a former producer may conduct no insurance business, including handling claims and completing sales that were in progress."

Under the law, insurance producers had 90 days to resolve their tax problems with the Department of Revenue before MDI was required to revoke their licenses.

The new procedures will extend another notice at that time giving licensees 15 days to reach an agreement with the revenue department.

MDI has no knowledge of the particulars and no ability to act on any tax matter. Insurance licensees must contact the Department of Revenue at 573-751-7200 or by e-mail on their individual tax cases.

Producers who are revoked have one year to resolve the tax questions and regain their licenses without re-taking the original, required examinations.



Largest insurers assign extra personnel to handle about 100,000 claims from May storms

Missouri's largest home and auto insurers deployed almost 500 extra personnel and opened 43 temporary sites to assist about 100,000 residents who suffered from wind or hail damage in late May, Department of Insurance (MDI) Director Scott Lakin said.

"Although this year's damage was far less severe than the May 2003 tornado and wind storms, the largest insurers responded with roughly the same additional manpower to deal with more widespread claims," Lakin said. "Over time, we continue to see improvements in policyholder assistance after these major weather events."

Nineteen of the state's top 24 insurers responded to an MDI survey and reported:

- They assigned 480 extra staff to storm areas, which ranged from tornado-ravaged, smaller cities in northern Missouri to metropolitan St. Louis, which suffered widespread hail damage to homes and vehicles.
- Thirteen of the companies established 43 mobile or other temporary on-site quarters to help policyholders file claims. Most were in metro St. Louis, but offices also were set up in Trenton, Maryville, Bethany, Plattsburg, Princeton, Troy, Chillicothe, Brookfield and Moberly.
- The companies hired at least 40 local companies to help settle claims.

(See largest insurers, p. 6)

Toni Kueffer - MDI Employee of the Quarter



*Toni Kueffer
Employee of the Quarter*

Along with celebrating her 1-year anniversary with the Missouri Department of Insurance, Toni Kueffer also became the MDI Employee of the Quarter. Kueffer started with MDI July 1, 2003.

Kueffer works in the MDI Information Systems section. She provides database support, programming and support for numerous systems within the department and works with outside state agencies for the transfer or exchange of information between agencies.

"There is something new every day," says Kueffer. "You never know which system may encounter a problem on any given day or what request you may receive." Kueffer enjoys her position because she is faced with new challenges. She enjoys creating and developing new systems to try to give the best end product to the user.

"I have been able to broaden my knowledge on databases, development and even networking. I have been able to focus on what my abilities are and to expand upon those to be the best that I can be."

Kueffer worked for the Division of Vocational Rehabilitation in the Department of Elementary Secondary Education before coming to MDI. "Toni is eager to accept new challenges and completes projects accurately and efficiently. I can trust in her ability to research and follow through on her work. She is always professional and is always aware of and concerned for the integrity of MDI's database and programs. We are fortunate to have her as part of our IS team," says Mary Plassmeyer, CIT Supervisor.

She and her husband, Brad, have been married for 13-years. They have a daughter, Jessica, 12, and a son, Jacob, 9. They live on a farm in California, MO and have 50 head of cattle. Kueffer stays busy at home with 4-H, starting a home remodeling project, scrap booking, interior decorating and watching NASCAR (Dale Jr., Rusty Wallace, Elliot Sadler), football (go Chiefs) and college basketball (go MU).



Holden: auto insurers should avoid surcharging, denying coverage to returning soldiers

Gov. Bob Holden urged Missouri's auto insurers to avoid surcharging or denying coverage to soldiers who return from active duty unless their driving records or other criteria justify that decision.

Auto insurers commonly classify drivers as "high risk" – and charge higher rates or turn down applications – if they have not maintained continuous insurance coverage on their autos and are seeking a new policy. Such interruptions in coverage usually accompany losses of driving privileges for moving violations.

In 2001, Sen. Doyle Childers of Reeds Spring sponsored and Holden signed Senate Bill 151, which prohibits such actions against soldiers who have not been driving because of active military service – but only in narrow circumstances.

"We are urging insurers to follow the spirit of the law – and act as good corporate citizens – by waiving any requirements on continuous coverage for soldiers returning to civilian life. Many of these soldiers simply stored their cars and cancelled their policies when they began full-time tours of duty to Afghanistan, Iraq and other sites in the U.S. or overseas," Holden said.

"If soldiers face these surcharges or refusals of coverage, they or their agents should contact Missouri Department of Insurance immediately for assistance. The department plans to work with these insurers to ease the return of these men and women from military duty."

Scott Lakin, the insurance department director, said SB 151 generally protects soldiers against higher premiums if the insurer uses separate corporate subsidiaries for covering substandard drivers. However, the legislature removed provisions that would have prohibited higher premiums within the same company if coverage is not continuous.

Childers said he introduced his legislation in anticipation of just such an event as the impending return of tens of thousands of American soldiers from Iraq, which has already begun.

He added that he hopes insurers will implement the original intent of his bill. "I had hoped to provide this protection against higher premiums to all personnel leaving active duty," he said. "We owe no less to those Americans who have given selflessly of their time and risked their lives in many cases for their country."

To contact MDI's consumers services staff, call 1-800-726-7390, or file an Internet complaint or inquiry at <http://insurance.mo.gov>.

North Dakota already has reported problems with the continuous-coverage requirements, although Missouri has received no complaints so far. The National Association of Professional Insurance Agents is asking all states to seek waivers on these requirements from auto insurers.

Largest insurers

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- Eleven of the 19 companies authorized local staff, adjusters and/or agents to write at least partial checks on the spot for damages, although some insurers limited the practice to temporary housing and repairs to prevent further damage.

The 100,000 projected claims from last month's storms would exceed the total for the serious tornado, wind and hail damage the state suffered in 2004, when the largest firms reported slightly more than 75,000 claims.

But the average payment is expected to fall well short of last year's claims because the damage was not as severe as last year's tornados. Through April 2004, the state's largest insurers already had paid \$401.1 million in losses for last year's damages.

MDI did not require companies to submit detailed breakdowns of actual and projected payments for storm losses.

Consumers who are dissatisfied by their companies' claims handling can call 1-800-726-7390 for assistance or file a complaint at www.insurance.mo.gov. Although complaints generally are not received until two to six weeks after storms, so far the agency's consumer service staff has logged 50 inquiries that range from general questions about claims filing to the first stages of formal complaints, Lakin said.

Under Missouri law, companies have 10 days to acknowledge a claim in writing, 30 days to investigate the claim and 15 days to decide whether to reject the claim or make a settlement offer.

The MDI survey results do not include Safeco, USAA, Allied Property and Casualty, Auto Owners, & Penn General insurance companies, which did not respond.



MDI Regulatory Actions

May 2004

Legal action - agents, agencies, brokers, companies

Michael J. Baker d/b/a BMI Insurance Agency, Kansas City, MO, license revoked for misappropriation of premiums.

Jacqueline M. Jackson, Foristell, MO, license revoked for misappropriation of premiums.

Melinda A. Wright, Springfield, MO, \$350 forfeiture for operating without a license.

AXA RE Property & Casualty Insurance Co., Farmington Hills, MI, \$1,000 forfeiture for inaccurate data filing.

Bankers Life and Casualty Co., Carmel, IN, \$1,000 forfeiture for inaccurate data filing.

CCP Acquisition Limited, St. Louis, MO, acquired **Alliance for Community Health, LLC d/b/a Community Care Plus**, St. Louis, MO.

Fidelity National Title Insurance Co., Chicago, IL, \$1,000 voluntary forfeiture for claim handling.

Fidelity Title Agency of Springfield, Inc., Springfield, MO, \$350 forfeiture for allowing business from agents not appointed/licensed.

Hogan Land Title Co., Springfield, MO, \$200 voluntary forfeiture for underwriting practices.

MetLife Investors Insurance Co., Tampa, FL, \$1,000 forfeiture for inaccurate statistical filing.

Metropolitan Insurance and Annuity Co., Tampa, FL, \$1,000 forfeiture for inaccurate statistical filing.

Ticor Title Insurance Co., Chicago, IL, \$1,000 voluntary forfeiture for claim handling.

Financial Exams

Farmers Mutual Insurance Co. of Adair County, Kirksville, MO.

Farmers Mutual Insurance Co. of Pettis County, Sedalia, MO.

Fidelity Security Life Insurance Co., Kansas City, MO.

German Salem Aid Association of Missouri, California, MO.

Union Town Mutual Insurance Co., Union, MO.

Company Changes

AF & L Insurance Co., Warrington, PA, converted from a property and casualty company with accident and health authority to a life company with accident and health authority.

Citizens Inc., Austin, TX, was admitted as a third party administrator (TPA).

Cunningham Lindsey Claims Management, Inc., Kansas City, MO, withdrew as a TPA.

DeCare Dental Health International LLC, Eagan, MN, was admitted as a TPA.

Gerling Global Life Insurance Co., Toronto Ontario, Canada, changed its name to **Revios Reinsurance Canada LTD.**

Maxicare Life and Health Insurance Co., Nashville, TN, changed its name to **Caterpillar Life Insurance Co.**

Planned Administrators, Inc., Columbia, SC, was admitted as a TPA.

Provantis Insurance Co., San Francisco, CA, changed its name to **Dentegra Insurance Co.**

The First Pyramid Life Insurance Co. of America, Tampa, FL, changed its name to **Imerica Life and Health Insurance Co.**

Universal Fire & Casualty Insurance Co., Hudsonville, MI, added fidelity and surety authority.

VantifLife Insurance Co., East Hartford, CT, was admitted with life, annuities, endowments, accident and health authority.

Windsor Life Insurance Co., Dallas, TX, was admitted with life, annuities, endowments, accident and health authority.

Vision Benefits of America, Inc., Pittsburgh, PA, was admitted with accident and health authority.

(See Regulatory actions, p. 7)

Regulatory actions

(continued from p. 7)

Market Conduct

Blue Cross Blue Shield of KC

Kansas City, MO

Voluntary Forfeiture - \$5,225

Country Mutual Insurance, Country Preferred Insurance & Country Casualty Insurance

Bloomington, IL

Voluntary Forfeiture - \$5,312

Humana Insurance

Louisville, KY

Voluntary Forfeiture - \$39,035, prompt pay violations

Humana Health Plan, Inc.

Cincinnati, OH

Voluntary Forfeiture - \$92,176, prompt pay violations

Met Group

Warwick, RI

Voluntary Forfeiture - \$28,901

TICO/Leader Insurance

Irving, TX

Voluntary Forfeiture - \$23, 712

JUA

(continued from p. 4)

At least 10 companies now are writing new physician business in Missouri, but several either have highly restrictive eligibility rules or are not accepting large numbers of new policyholders. Five companies – including one that will not take new customers – account for 83 percent of the entire doctors' market, which is the one most affected by current conditions.

The JUA board established the plan in time to write policies for the large block of physicians whose policies expire around June 30. June and December are the prime seasons for physicians to shop for new coverage.

The JUA contracted with one of the nation's largest insurance brokerages and risk management consultants, Marsh Inc., to handle the program's daily operations. Rates were developed by Tillinghast, which is among the largest actuarial firms.

Beside the Web site, interested medical providers or agents can contact the JUA at 1-800-806-7015.

Providers that buy coverage are not liable if the JUA runs a deficit. State law provides that in case of deficits, they are assessed to private insurers based on the state's huge pool of casualty (liability) insurance companies, which include auto and homeowners. Those insurance carriers, however, do not absorb those costs because they are allowed to take tax credits for the assessments.



Missouri Department of Insurance

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